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File No. O. Rents/51
Legal Department
A BRANCH

A'/57 Subject:— Opinions under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947

File No. O. Rents/51 294-A

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Legal Department File No. O. Rents/51.


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/and bona fide required by the

Local Department.

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Section 33.

Rebate in respect of absentee ledgers-power of Controller to direct.

The question raised for the R.LA.'s consideration is whether under section 33 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, it is competent for the Controller to provide for a rebate, with the consent of the hotel proprietors in respect of the period of the lodger is temporarily absent from the hotel. Section 33(1) empowers the Controller to fix a fair rate to be charged for board, lodging or other service provided in a hotel or lodging house. Sub-section (2) provides that the Controller may fix a fair rate separately for (i) lodging with reference to the nature of the accommodation and the number of the ledgers to be accommodated, (ii) board, partial or full, (iii) other service. Under sub-section (3) the Controller may fix a fair rate separately for daily and monthly lodgers. It is clear from these provisions that the Controller has no power to fix any rebate of the charges for the period of absence of a lodger from the hotel. Whether such rebate should or should not be granted is matter to be settled between the lodger and the hotel or lodging house keeper. The question of rebate should, therefore be left entirely to be settled between such proprietors and ledgers.

Sd/-

Additional Secretary to Government.

U.R. to L. & H.D., No. 2483, dated the 9th February 1951.

EVY. 28/6.

Legal Department.

It appears that the Akhil Bharat Printers Ltd., who have taken a piece of land on a 999 years lease from the PetitTrust propose to sub-lease a ~~xxx~~ portion of it (approx. 3000 sq. years) to the Hindustan Newspapers Ltd. an associate company, or to a co-operative Society with which the Hindustan Newspapers would be associated for the purpose of constructing a residential building. The question for consideration whether in view of section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the proposed subleasing would be feasible.

2. The first point is whether the provisions of section 15 would be attracted in this case. "Premises" as defined in section 5(8) of the Bombay Rents, Hotel and Lodging House Rates Control Act means inter alia "any land not being used for agricultural purposes". Part II of the Act applies to premises let for residence, education, business, trade or storage (see section 6(1) of the Act) The premises in the present case are leased to Akhil Bharat Printers, Ltd for being used for shops, offices, ~~xx~~ godowns and residential purposes. Evidently therefore Part II of the Act applies to the premises.

3. Section 15 of the Act provides that notwithstanding anything contained in any law, it shall not be lawful, after the coming into operation of the Act, for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein. This section imposes a restriction on the subletting of premises (which includes lands) by tenants. But the proviso to that section empowers the State Government to permit, by notification in Official Gazette, in any area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in the notification. Under

this proviso it is possible to permit the transfer of interest in particular localities, but only in respect of leases or classes of leases as my be specified. The notification in question cannot, however, be issued in respect of an individual lease. It would, however, be feasible to issue a notification in respect of all or a class or classes of leases in the Tvadee locality.

Sd/-

Additional Secretary to Government.

., No. 5693, dated the 10th April 1951.

EVY. 28/6.

Office of the R.L.A.

A wrong reference, due to a clerical mistake, in the notification to the section and sub-section will not make the notification bad (See I.L.R. (1941) Nagpur 624). Labour and Housing Department may, however, issue a corrigendum.

Sd/-

Remembrancer of Legal Affairs.

U.R' to L. and H.D., No. 10499, dated the 2nd July 1951.

EVY. 28/6.

Legal Department.

R.I. No. 5018 dt. 13-3-1951.

Submitted.

Attention is invited to R.L.A.'s opinion in letter No. 11152, dated 7-8-1950, addressed to the Area Lands, Hirings and Disposals Officer, Bombay Area, in which advice was given to that Officer that the Bombay Port Trust would not be entitled to claim from the Defence Department any rate in excess of the standard rent prescribed by the Bombay Rents, Hotel and Lodging House Rates Control Act, 1937. This opinion, it appears, was reffered by the Ministry of Defence to the Ministry of Law who have expressed the view that the Bombay Port Trust would be entitled to claim exemption from the previsions of the Act. The Area Officer desires the R.L.A. to consider this aspect of the case.

The view taken by the R.L.A. appears to be correct. This was the view taken by me in my note-dated 28-7-1950.
(slip z) but was not accepted by R.L.A.(Shri Lad).

Sd/-

Remembrancer of Legal Affairs.

EVY. 28/6.

No. 12644.

Office of the

Remembrancer of Legal Affairs,
Bombay Castle (Bombay No. 1), 7th August 1951.

To

The Area Lands, Hirings and Disposals Officer
Bombay Area, Botawala Chambers,
Sir Phirozshah Mehta Road,
Fort, Bombay No. 1.

Subject:- Land at Dumayne Road, ~~[illegible]~~ Sasson Dock, Colaba.

Sir,

With reference to the correspondence ending with your letter No. BOM/907/460, dated 17th July 1951, on the above subject, I am to state that on reconsideration I agree with the view expressed by the Ministry of Law. The opinion expressed in this office letter No. 1152, dated 7th August 1950, should be considered to have been superseded.

Yours faithfully,

Sd/-

Remembrancer of Leal Affairs.

EVY. 28/6.

Legal Department.

R.E. No. 18478 & 41515

Unless there is sufficient evidence to show that the garage in question is attached to the flat and the rent of the flat is inclusive of the rent of the garage, Commissioner of Police would not be justified in refusing to pay the rent of the garage. If it can be shown that on ~~the~~ 1st September 1940, the rent of the flat inclusive of the garage was Rs. 102-9-0, it may become necessary to apply to have the standard rent of the flat fixed by the Court.

Sd/-

Solicitor & to Government.

U.R. to H.D., No. 14514, dated the 12th September 1951.

EVY. 28/6.

Legal Department.

As the Deolali High School was merely a licensee and not a lessee or a sub-lessee, the protection of the Rent Act would not be available to it.

Sd/-

Additional Secretary to Government.

U.R. to E.D., No. 14305, dated the 7th September 1951.

EVY. 28/6.

Legal Department.

Bombay Rents Hotel & Loding House Rates Control Act, 1947 (Bom. LVII of 1947 Section 13(1)(e).

It appears that certain lands and buildings at Santa Cruz belonging to Messrs. F.M. Chinoy & Co., Ltd., were taken on lease by Government in 1949, for a period of fifty years commencing from the 1st January 1949. Clause (4) sub-clause (a) of that lease permits the lessee to sublet the demised premises or any portion thereof with the approal in writing of the lessor so to do. It appears that the leased property now vests in the Bombay State Transport Corporation and a part of this property is now considered surplus for the use of the Corporation. The Corporation, therefore, desires to lease out the surplus part. Home Department consider that there would be no legal objection to sub-letting the surplus portion of the premises to Government Department but that as pointed out by the Solicitors of the Lessors it would be risky to sublet any part of the premises to outsiders in view of the provisions of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 (Bom. LVII of 1947). R.L.A. is requested to advise.

2. Section 4(1) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 provides: "This Act shall not apply to any premises belonging to Government or a local Authority or apply as against the Government to any tenancy or other like relationship created by a grant from Government in respect of the premises taken on lease or requisitioned by Government; but it shall apply in respect of premises let to the Government or a local authority." In the present case the premises were leased to Government and the provisions of the Act would not have applied as against Government to any

tenancy or other like relationship created by a grant from Government in respect of the premises taken on lease by Government. But since the Bombay State Transport Corporation has been created and the leased property now vests in that Corporation benefit of the first part of section 4(1) would not be available and the property would be deemed to be leased to the Corporation. The provisions of the Act, will, therefore apply. Section 15 prohibits subletting. Section 14 provides that where the interest of a tenant of any premises is determined for any reason any sub-tenant to whom the premises or part thereof have been lawfully sub-let before the coming into operation of this Act, shall subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued. Since sub-letting of the premises in the present case would be after the coming into operation of this Act section 14 would be inapplicable. Consequently, if the premises or part thereof leased in the present case from Messrs. F.M. Chiney & Co. Ltd., are sublet section 13(1)(e) will apply and it would be open to the Lessor to determine the lease; and on the lease being so determined, the sub-tenant as well as the Corporation would be liable to be evicted. This prohibition to sublet and the risk of eviction of the sub-tenant would equally apply if the premises or any part thereof are sub-let to Government by the Corporation.

Sd/-

Additional Secretary to Government.

U.R. to H.D., No. 15171, dated the 22nd September 1951.

Legal Department.

Bombay Rents, Hotel and Lodging Hose Rates Control Act, 1947.

Sec. 39(d).

The view taken by the Secretary, Development Department, is correct. If a lodger accommodates in the premises more persons that the number for whom the accommodation is let, he would be deemed to be doing an act inconsistent with the purpose for which accommodation is provided to him within the meaning of section 39(d) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and the controller would be competent to issue a certificate to the owner of the lodging house to recover possession.

Sd/-

Additional Secretary to Government.

U.R. to L. & H.D., No. 13963, dated the 30th August 1951.

EVY. 28/6.

Legal Department.

Section 4(1) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 reads as follows:-

"This Act shll not apply to any premises belonging to the Government or local authority or apply as against Government or any tenancy or other like relationship created by a grant from the Government, in respect of premises taken on lease or requisitioned by Government; but it shall apply in respect of premises let to the Government of a local authority.

In view of this proviions section 25 of the Rent Act will not apply to requisitioned premises and there would be no legal objection to allot the requisitioned premises even for a non-residential purpose even though such premises before requisition were used for a residential purpose. The view taken by the Labour and Housing Department is correct.

Sd/-

Additional Secretary to Government.

U.R. to L.&H.D., No. 15160, dated the 22nd September 1951.

EVY. 28/6.

Legal Department.

Bombay Rents Hotels and Lodging House Rates Control Act, 1949.

It appears that the rents agreed to be paid by the Director seem to be comparatively less than those of certain others godowns hired by the agricultural and forests Department. Further he has pointed out that the godowns in question have railway sidings and thus saved transport charges. In view of all these considerations and in view of the fact that the godowns were in Government's possession for only a short period it does not seem advisable to resort to proceedings under the Rent Act, 1947.

Sd/-

Additional Secretary to Government.

U.R. to A. & F.D., No. 18021, dated the 13th November 1951.

RVY. 28/6.

L.D.R.I. No. 17313 dt. 21-8-51.

The question for R.L.A.'s consideration is ~~xxxx~~ whether a landlord's liability for repair is restricted to repairs which can be carried out from an amount not exceeding one month's rent or whether it extends to all necessary repairs irrespective of any financial limit.

Please see U.R. to E.D., No. 15249, dated 24th September 1951.

EVY. 29/6.

Legal Department.

Bombay Rents Hotel & Lodging House Rates Control Act, 1947.

Section. 23.

Section 23 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, provides:

"(1) Notwithstanding anything contained in any law for the time being in force and in the absence of any agreement to the contrary by the tenant, every landlord shall be bound to keep the premises in good and tenantable repair.

"(2) If the landlord neglects to make within a reasonable time, after a notice is served upon him by post or in any other manner any repairs which he is bound to make under sub-section (1), the tenant may make the same himself and deduct the expenses of such repairs from the rent or otherwise recover them from the landlord:

"Provided that the amount so deducted or recoverable in any year shall not exceed one-twelfth of the rent payable by the tenant for that year".

It is clear from sub-section (1) that the liability to keep the premises in good and tenantable repair is imposed on the landlord unless the tenant by an agreement has taken such liability upon himself, and this liability of the landlord is unlimited. If the landlord fails to keep the premises in good and tenantable repair, option is given to the tenant under sub-section (1) to carry out such repairs after notice is served upon the landlord by post or in any other manner and the tenant can deduct the expenses of such repairs from the rent or otherwise recover from the landlord. But his right to recover the expenses is restricted by the proviso to sub-section (2), with the result that the amount to be

deducted from the rent or recoverable in any year shall not exceed one-twelfth of the rent payable by the tenant for that year. If, for instance, the tenant spends Rs. 100 over repairs and the yearly rent of the premises is Rs. 600, he can deduct from the rent Rs. 50 during the year in which he has carried out the repairs and the remaining Rs. 50 from the rent during the next year.

Sd/-
Additional Secretary to Government.

U.R. to E.D., No. 15249, dated the 24th Septr. 1951.

EVY. 29/6.

Office of the R.L.A.

Shri Abdul Karim Abdulla - a tenant of House No. 39-41 Jail Road South Bombay No. 9 has complained to the Honourable Minister that his landlord does not get the necessary repairs done to the tenanted tenement in spite of his repeated requests and the house is in a dangerous condition and by its suddenly falling down, loss of human lives is feared, unless it is suitably repaired immediately.

The Honourable Minister (Public Health) has forwarded the petition of Shri Abdul Karim Abdulla to the R.L.A. with following question-

"With the R.L.A. state what is the legal position in such cases. Government receives so many petitions like this."

The rights and liabilities of the landlords and the tenants are governed by the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Under section 23 every landlord shall be bound to keep the premises in good and tenantable repairs. If he neglects within a reasonable time, after a notice is served upon him, to make the necessary repairs, the tenant may make the same himself and deduct to expenses of such repairs from the rent of otherwise recover them from the landlord provided that the amount so deducted or recoverable in any year, shall not exceed onetwelth of the rent payable by the tenant for that year. It would be also open to the tenant to move the Municipal Commissioner to take action under section 354 of the Bombay Municipal Corporation Act, 1888. Government can do nothing in the matter.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No. 19944, dated the 23th December 1951.

KVV. 29/6.

43.& 45.

Legal Department.
R.I.No. 24163 dt. 22-11-51
5-12-51.

The Company has a Scheme in hand for building a Canteen, Dispensary & Creche for the workers of the Mill. On the site chosen for the construction of the proposed building, there are already existing two buildings, which will have to be demolished to make room for the new structures. The ground floors of the both buildings accommodate petty shops such as Bidi Shops, Pan Shops, Hair Cutting Saloons, Grocer's shops, Hindu & Mohamedan Hotels. The Shop keepers are on monthly tenancy and in some cases the rooms to the rear of the shops are used as residential quarters. It will not be possible for the company to obtain vacant possession from their tenants for many months, if at all, because of the Bombay Rents, Hotel & lodging House Rates Control Act, 1947. The Company therefore requests Government to exempt these two buildings in question from the provisions of the Act, in the exercise of the powers conferred upon them by section 6 of the Act. The papers have been sent to the R.L.A. with a request to advise whether in the circumstances of this case exemption can be granted under section 6 of the Act.

.....

Office of the R.L.A.

The view taken by the Secretary, Labour and Housing Department, in his note dated 5th November 1951 is correct. Under section 6(1)

of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, no exemption can be granted in respect of the premises in question.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L. H.D., No. 20536, dated the 24th December 1951.

EVY. 29/6.

~~xxBx~~ Office of the R.L.A.

Government Notification, H. & L.G.D. No. 5975/33 dated the 12th May 1948 (as amended from time to time) issued under the provise to section 15 of the Bombay Rents Hotel and ~~xx~~ Lodging House Rates Control Act, 1947, cannot apply to the present case. But the provise is not confined to a class of ~~x~~ leases. It can apply to a single lease also. The words "such leases" make that point clear. All that is necessary is that the exemption in the case of an individual lease should not be granted in an arbitrary or unreasonable manner. The L. H.Department should state the reasons in the notification granting the exemption.

Sd/-

Remembrancer of Legal Affairs.

U.R. to H.D., No. 19947, dated the 13th December 1951.

EVY. 29/6.

Office of the R.L.A.

Bombay Rents Hotel and Lodging House Rates Control Act, 1947.
Section 39(b)
Advocate General's Opinion No. 13 dated the 21st April 1949.

The view taken by Secretary, Labour and Housing Department, dated the 18th December, 1951 is correct. The opinion of the Advocate General No. 13 dated the 21st April 1949 supports the view. As pointed out in that opinion that although the words 'for any other cause' cannot be read as constituting a third and an independent ground, it would not be unreasonable to hold that when a proprietor of a lodging house bona fide desires to close the lodging house he requires the premises for a bona fide and a reasonable purpose. The case of nuisance which was actually considered by the Advocate General in his opinion may not fall within the scope of clause (b) of section 39 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. But there is nothing to show that the present case in which the proprietor of a lodging house finds it unprofitable to continue his business, does not so fall. The Controller, therefore, can give a certificate in the present case, if he is satisfied that the proprietor bona fide intends to close the lodging house.

Sd/-

Remembrancer of Legal Affairs.

U.R. to L. & H.D., No. 20599, dated the 27th December 1951.

EVY. 29/6.